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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellant,)
vs.)
DAVID EUGENE SMITH,)
Defendant-Appellee.)

Filed August 30, 1983

3-176
68934

Appeal from Jefferson District Court - Dick R. Schlegel, Judge.

The State appeals the trial court's dismissal of an information charging defendant with two counts of burglary in the second degree in violation of Iowa Code sections 713.1 and 713.3 (1981). REVERSED AND REMANDED.

Thomas J. Miller, Attorney General of Iowa, and Marcia Mason, Assistant Attorney General, for plaintiff-appellant.

Donald E. Poyner of Fairfield, Iowa, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell and Hayden, JJ. Schlegel, J., takes no part.

PER CURIAM

The State appeals the trial court's dismissal of an information charging defendant with two counts of burglary in the second degree in violation of Iowa Code sections 713.1 and 713.3 (1981). We reverse the ruling of the district court and remand with instructions to reinstate the charges.

Defendant was charged with two counts of second degree burglary. Under each count, the occupied structure defendant was alleged to have entered was a motor vehicle. Defendant initially pleaded not guilty, then subsequently pleaded guilty. At the guilty plea proceeding, defendant admitted that he had entered an unlocked van and stolen a bank deposit bag containing some papers, some withdrawal slips, some checks, and a safe-deposit key, and that he had entered an unlocked automobile and stolen a briefcase containing some papers. The court questioned whether the burglary statute applied to motor vehicles and refused to accept the guilty pleas.

Defendant subsequently filed a motion to dismiss on the grounds that the burglary statute did not apply to the vehicles in question, and that the "occupied structure" language of the burglary definition set out in Iowa Code § 713.1 and the term "anything of value" contained in the occupied structure definition (Iowa Code § 702.12) are unconstitutionally vague. The trial court dismissed the information after concluding that passenger vans and automobiles do not fit within the definition of "occupied structure." The trial court did not rule on defendant's constitutional claims.

The State appeals pursuant to Iowa Code § 814.5(1)(a). This section allows the State the right of appeal from any "order dismissing an indictment, information, or any count thereof." On appeal, the State asserts that the trial court erred by concluding that a motor vehicle is not an "occupied structure" within the meaning of Iowa Code §§ 702.12 and 713.1.

Iowa Code § 713.1 provides that the offense of burglary is committed when:

> Any person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an occupied structure or area enclosed in such a manner as to provide a place for the keeping of valuable property secure from theft or criminal mischief, such occupied structure or place not being open to the public.

The term "occupied structure" is defined in Iowa Code § 702.12 as follows:

> An "occupied structure" is any building, structure, land, water or air vehicle, or similar place adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or other activity therein, or for the storage or safekeeping of anything of value. Such a structure is an "occupied structure" whether or not a person is actually present. (emphasis added)

Under this definition, a personal automobile or passenger van is clearly an "occupied structure" since these vehicles are typically used to provide incidental storage. See K. Dunahoo, The New Iowa Criminal Code, 29 Drake L. Rev. 237, 358 (1979-80). Dunahoo reasons that the statute "does not contain such qualifying language as a vehicle primarily used for the storage or safekeeping of property. Moreover, exclusion of automobiles from the burglary statute would mean that there would be no aggravated form of theft involving break-ins of automobiles." Id. at 972. The supreme court adopted Dunahoo's reasoning in State v. Buss, 325 N.W.2d 384 (Iowa 1982), and held that the cab portion of a pickup truck is an "occupied structure" within the meaning of the burglary statute.

Appellee argues that the doors on both vehicles were unlocked and that therefore the owners could not have intended them to be used for the storage or safekeeping of anything of value. We do not agree. The supreme court addressed a similar argument in State v. Sylvester, 331 N.W.2d 130 (Iowa 1983). In Sylvester, defendant was charged with burglary after entering an unlocked delivery van and removing several cases of beer. As happened in the present case, the trial court dismissed the charges and the State appealed. Defendant argued that he couldn't have committed burglary, since the van was unlocked. In response to that, the court answered that "[t]he definition of burglary . . . does not require that an

occupied structure be locked in order for a breaking to occur." Id. at 132. The court held that defendant had been properly charged under the burglary statute. To reach this conclusion, the court had to reason that a vehicle need not be locked in order to be considered an "occupied structure." The trial court entered his order of dismissal of the trial information on June 14, 1982, and thereafter the supreme court decided Buss on October 27, 1982, and Sylvester on March 16, 1983.

Appellee argues next that Iowa Code § 713.1 is void for vagueness since the code's definition of "occupied structure" is not clearly enough defined to give a person of ordinary intelligence fair warning as to what is meant by it. The words appellee cites as being indefinite are "storage or safekeeping of anything of value."

As a rule, a penal statute is void for vagueness if it fails to "give a person of ordinary intelligence fair notice of what is prohibited and provide an explicit standard for those who apply it." State v. Anderson, 308 N.W.2d 42, 46 (Iowa 1981). The due process requirement of specificity is satisfied, however, whenever "the meaning of the words used can be fairly ascertained by reference to similar statutes, other judicial determinations, reference to the common law, to the dictionary, or if the words themselves have a common and generally accepted meaning." State v. Williams, 238 N.W.2d 302, 307 (Iowa 1976). See also State v. Sullivan, 298 N.W.2d 267, 270 (Iowa 1980), and State v. Donner, 243 N.W.2d 850, 853 (Iowa 1976).

We are of the opinion that the phrase "storage or safekeeping of anything of value" is not vague as applied here. The words "storage" and "safekeeping" are common words, and have generally accepted meanings which imply custody and protection. The word "value" has many applications, but in common parlance it refers to the worth of an item. Judicial pronouncements have carefully refined the term to mean monetary worth or market worth. See Comstock v. Iowa State Highway Commission, 121 N.W.2d 205, 210, 254 Iowa 1301 (1963); Lincoln J.S.L. Bank v. Board of Review, 227 Iowa 1136, 290 N.W. 94, 95 (1940); and 91 C.J.S. Value at 801 (1955).

Even if the phrase "storage or safekeeping of anything of value" was vague, appellee cannot prevail here. In order to prevail, appellee must show that the statute in question is vague specifically in its application to the conduct for which he was charged. State v. Donner, 243 N.W.2d at 853. "Ordinarily one to whom a statute is constitutionally applied will not be allowed to attack the statute on the grounds it might be unconstitutionally applied to others." State v. Williams, 238 N.W.2d at 306. Since the Iowa Supreme Court has clearly indicated that personal vehicles are "occupied structures" for purposes of the burglary statute, appellee's allegations of vagueness are without merit.

REVERSED AND REMANDED WITH INSTRUCTIONS TO REINSTATE THE CHARGES.